

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PHONE DIRECTORIES COMPANY,
INC.,

Plaintiff,

vs.

KELLY CLARK, an individual and THE
LOCAL PAGES, INC., a Utah
corporation,

Defendants.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEYS FEES

Case No. 2:00-CV-468 TS

This matter is before the court on Defendants' Motion for Attorney Fees. Pursuant to the Court's Memorandum Decision and Order on Second Order to Show Cause, the Court found Defendant did not find violate its February 1, 2002 Stipulated Judgment.

Defendant moves for attorney fees on the ground that when a prior Order to Show Cause determined that Defendant had violated the Court's injunction, fees had been awarded to Plaintiff. Defendant further argues that Plaintiff should have known there were insufficient grounds to sustain a finding of contempt. Finally, Defendant argues that it should be awarded fees as the prevailing party.

Plaintiff opposes the award of attorney fees. Plaintiff contends that under the American Rule, fees may not be awarded absent a basis in a statute or rule, or where there is a showing of bad faith or a wilful violation of a court order.

The Court finds that Plaintiff is correct. Defendant does not cite a statute or rule supporting its request.


Although federal courts have the inherent power to award fees, such awards are appropriate only in exceptional cases and for dominating reasons of justice. When a party acts "in bad faith, vexatiously, wantonly, or for oppressive reasons," a court may properly depart from the traditional American rule disfavoring fee awards. This Circuit sets a high bar for bad faith awards, otherwise those with colorable, albeit novel, legal claims would be deterred from testing those claims in a federal court. Accordingly, we have insisted that a trial judge make a finding of bad intent or improper motive.¹

There is nothing in the record to indicate bad faith in bringing the motion. Although Plaintiff did not prevail, there was a sufficient evidentiary basis for the Motion to be brought in good faith. It is therefore

ORDERED that Defendants' Motion for Attorney Fees (Docket No. 111) is DENIED.

DATED March 31, 2009.

BY THE COURT:



TED STEWART
United States District Judge

¹*Mountain West Mines, Inc. v. Cleveland-Cliffs Iron Co.*, 470 F.3d 947, 953 -954 (10th Cir. 2006) (internal citations and quotation marks deleted).